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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,900	12/21/2001	Daniel L. Ellingson	16,988	3215
23556	7590	10/03/2003	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			KOKABI, AZADEH	
		ART UNIT	PAPER NUMBER	
		3751		

DATE MAILED: 10/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/027,900

Applicant(s)

ELLINGSON ET AL.

Examiner

Azy Kokabi

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 21 December 2001.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 and 22-27 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 18-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)                  4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                  5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                  6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/ Restriction***

1. Applicant's election of Group I, species A as depicted in figure 1 in Paper No. 8 has been acknowledged. The election was made without traverse.
2. Claims 11-17, 22-27 are withdrawn from further consideration by Examiner, 37 C.F.R. 1.142(b), as being drawn to a non-elected invention.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 07/08/02 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
4. The information disclose statement filed on 04/28/03 has legible copies, therefore these references have been considered.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 5-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al ('132).

Young discloses a fluid containment container (#10) having a first and second opposing member (#12 and #14), a top (see figure 1), a bottom (#20), and a pair of opposing sides (see figure 1). The top of the container has an opening (#21) to receive materials. Young further discloses an anti-splash member (#26 and #28), which divides the container into a receiving portion (see generally at #30 in figure 2) and a collection portion (see generally at #31 in figure 3). The anti-splash member has at least one seam (#26 and #28 and see column 4, lines 6-11). The seams define an aperture (see figure 1, #30).

Figure 1 shows that the seam (#26 and #28) decline towards the aperture (#30). The aperture is located adjacent one of the opposing sides (see figure 1). Young further discloses a holding means (#44) and a clamp (#34), which can both act as a handle.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2-4, 7, 9-10, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young ('132) in view of Barreau ('880).

As previously, indicated in paragraph 6 above, further Young discloses all the limitations as set forth, however Young fails to disclose a container having opposing sides which are trapezoidal or curvilinear and is flushable.

Barreau ('880) discloses a protective lining for toilets, which is flushable and made of biodegradable material (see abstract). The lining of Barreau is disposable in a toilet (see column 4, lines 55-68). The liner is substantially trapezoidal (see column 2, line 25-26). The receiving portion (see upper part of container-generally at #3) has a larger volume than the collection portion (generally at #7). The shape and biodegradable materials used in Barreau help ensure proper flushing of the liner.

In view of Barreau, it would have been obvious to one of ordinary skill in the art to have modified the container of Young with a flushable and trapezoid or curvilinear container in order to provide a simple method of disposing the container.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young in view of Barreau in further view of Giori ('578).

As previously, disclosed in paragraph 9 above, Young discloses all the limitations as set forth, however Young fails to disclose a container, which is made of three layers.

Giori discloses a multi-layered film having three layers, including a barrier layer, a water-sensitive layer, and it may also include a saturation layer (see figure and Applicant's specification on page 7). The multilayered material enables the film to have relatively high

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strength and resistance, however it may also quickly be discharged into the water of a flushing toilet (see abstract).

In view of Giori, it would have been obvious to have modified the device of Young with a multi-layered container in order to provide for a strong and flushable container.

***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references cited disclose various features, which are similar to those disclosed by Applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azy Kokabi whose telephone number is (703) 306-4154. The examiner can normally be reached on Monday- Friday, 6:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

AK

  
Gene Manocchia  
Supervisory Patent Examiner  
Group 3700